

**MARKET CONDUCT EXAMINATION REPORT**  
**AS OF JUNE 30, 2005**

**Allianz Life Insurance Company of North America**  
**5701 Golden Hills Drive**  
**Minneapolis, MN 55416-1297**

**NAIC Company Code: 90611**  
**NAIC Group No: 761**  
**Colorado Company No: 975**

**EXAMINATION PERFORMED**  
**for**  
**STATE OF COLORADO**  
**DEPARTMENT OF REGULATORY AGENCIES**  
**DIVISION OF INSURANCE**

**Allianz Life Insurance Company of North America  
5701 Golden Hills Drive  
Minneapolis, MN 55416-1297**

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EXAMINATION REPORT  
as of  
June 30, 2005**

**Examination Performed by**

**Stephen E. King, CIE  
Jo-Anne G. Fameree, CIE, FLMI, AIRC, ACS**

**Independent Market Conduct Examiners**

**Consulting Services Performed by**

**Fred A. Buck, FSA, MAAA  
Buck & Associates**

October 17, 2006

The Honorable David F. Rivera  
Insurance Commissioner  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner:

A market conduct examination of the Allianz Life Insurance Company of North America was conducted in accordance with §§10-1-203 – 10-1-205, Colorado Revised Statutes. This examination focused on the Company's life and annuity business. Examiners completed a review of underwriting, rating, policyholder service, marketing and sales, producer licensing, producer sales, complaints and claims practices. The records/files were examined at the Company's office, located at 5701 Golden Hills Drive, Minneapolis, MN 55416-1297.

The time period covered by the examination was from July 1, 2004 through June 30, 2005.

The results of the examination, herein, are respectfully submitted.

Stephen E. King, CIE

Jo-Anne G. Fameree, CIE, FLMI, AIRC, ACS

**MARKET CONDUCT  
EXAMINATION REPORT  
OF THE  
ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA**

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## **COMPANY PROFILE**

Allianz Life Insurance Company of North America (“Allianz” or “Company”) was incorporated in Minnesota on April 17, 1896 as North American Life and Casualty Company (North American Life), which commenced business on May 8, 1896. On March 31, 1993 North American Life changed its name to Allianz Life Insurance Company of North America. As of May 31, 1993, Allianz acquired all the assets and liabilities of Fidelity Union Life Insurance Company of Dallas, Texas. On May 16, 1999, Allianz acquired Life USA Insurance Company and the two entities merged on July 1, 2002. Allianz was licensed in Colorado on September 23, 1946, and is authorized to conduct the following lines of business: accident & health, annuities, credit (life, A&H), general life, and variable contracts.

## **COMPANY OPERATIONS AND MANAGEMENT**

The Company is currently licensed and authorized to conduct business in all states, except New York.

Allianz writes a portfolio of individual fixed and variable life insurance and annuity products as well as long term care insurance products. In addition, Allianz also provides specialized healthcare products and services to Health Maintenance Organizations, businesses with self-insured employee benefit plans and Preferred Provider Organizations.

At the end of 2003, Allianz exited the affinity/association market.

Allianz distributes its products solely through licensed independent agents and registered representatives. All agents and representatives are contracted with either a Field Marketing Organization (FMO) or a Broker/Dealer (BD). The agents/representatives relationship is controlled by a contractual arrangement between themselves and the FMO/BD. The FMO/BD is responsible for the supervision of the independent agents or representatives.

In 2005 the Company’s life insurance business represented a 0.22% \* share of the Colorado life insurance market, with direct premiums totaling \$4,022,000\*. The Company’s annuity business represented a 7.99%\* share of the Colorado annuity market, with considerations totaling \$324,127,000\*.

\* Data as reported by the NAIC and published as the “Combined Market Share Report”.

## **PURPOSE AND SCOPE OF EXAMINATION**

Independent Examiners, contracting with the Colorado Division of Insurance (DOI), in accordance with Colorado Insurance Laws, §§ 10-1-201 - 10-1-204, C.R.S., which allows the Commissioner the discretion and authority to schedule and conduct examinations of insurers, reviewed certain business practices of the Company. The findings in this report, including all work products developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance laws related to life insurance and annuity business. Examination information contained in this report should serve only this purpose. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Colorado Division of Insurance, based on model procedures developed by the National Association of Insurance Commissioners. Examiners have relied primarily on records and materials maintained by the Company, generally covering the examination period from July 1, 2004, through June 30, 2005.

The examination included review of the following:

- Company Operations / Management
- Marketing and Sales
- Complaints
- Producers / Sales and Licensing
- Underwriting - Forms / Policyholder Services
- New Business Underwriting Practices and Rating
- Underwriting - Cancellations
- Claims

This examination report is a report written by exception. References to any practices, procedures or files, that contained no improprieties, were omitted. Therefore, the majority of the material reviewed may not be addressed in this report. In the course of the examination, Examiners issued the Company Examination Memorandums and Comment Forms to obtain specific information and/or address noted discrepancies. When Examiners issue either form, the Company is required to provide a detailed response, within a specific time frame. Generally, only the Comment Form will cite a specific statute or regulation when a potential non-compliant situation is identified.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When utilizing a sampling technique to select a sample file population for review, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic or if, as a result of the file selection process, it was not possible to determine an exception percentage, an error tolerance percentage was not utilized. Also, if more than one sample population was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

Examination findings may result in administrative action by the Division of Insurance. During the course of the examination, all unacceptable or non-complying practices of the Company may not have been discovered. However, failing to identify specific Company practices does not constitute acceptance of such practices. The contents of this report should not be construed to either endorse or discredit any insurance company or product.

### **EXAMINERS' METHODOLOGY**

In accordance with §§ 10-1-203 & 10-1-204, Colorado Revised Statutes, examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws and regulations, as they pertain to life and annuity operations, as shown below.

<b>Law/Regulation</b>	<b>Concerning</b>
Section 10-1-108	Duties of Commissioner – reports – publications – fees – disposition of funds - adoption of rules.
Section 10-1-109	Rules and regulations of commissioner
Section 10-1-111	Grounds and procedure for suspension or revocation of certificate or license of entities.
Section 10-1-128 & 10-1-129	Fraudulent insurance acts.
Section 10-2-103 to Section 10-2-503	Licenses – General Provisions, Prelicensure Education, Continuing Education, Licensing and Appointments and Nonresident Licenses.
Section 10-2-701 to 10-2-704	Licenses – Business Conduct of Licensees.
Section 10-2-1001 to 10-2-1101	Managing General Agent Act.
Section 10-3-105	Certificate of Authority.
Section 10-3-109	Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failing, to maintain.
Section 10-3-1101 to 10-3-1104	Unfair Competition – Deceptive Practices.
Section 10-7-102 to 10-7-109	Individual Policy Provisions.
Section 10-7-112	Interest payable on benefits or proceeds.
Section 10-7-113	Acceleration of Benefits
Section 10-7-302	Nonforfeiture Compulsory Policy Provisions.
Regulation 1-1-7	Market Conduct Record Retention.
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests.
Regulation 1-2-7	Concerning Managing General Agents.
Regulation 1-2-9	Fees Charged by Agents/Brokers.
Regulation 1-2-10	Concerning the Regulation of Insurance Producers by the Colorado Division of Insurance: Colorado Producer Licensing Model Act.
Regulation 2-1-7	Concerning Issuance of a Certificate of Authority.
Regulation 4-1-1	Variable Annuity Contracts.
Regulation 4-1-2	Advertising and Sales Promotion of Life Insurance.



<b>Law/Regulation</b>	<b>Concerning</b>
Regulation 4-1-3	Variable Life Insurance.
Regulation 4-1-4	Replacement of Life Insurance or Annuity Contracts.
Regulation 4-1-5	Permitting Same Minimum Nonforfeiture Standards for Men and Women Insured Under 1980 CSO and 1980 CET Mortality Tables.
Regulation 4-1-8	Concerning the Disclosure Requirements for Life Insurance Illustrations.
Regulation 4-1-11	Concerning Senior Protection in Annuity Transactions.
Regulation 4-2-9	Concerning Non-Discriminatory Treatment of Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Related Illness by Insurers of Life and Health Insurance.
Regulation 6-1-1	Limiting Coverage.
Regulation 6-2-1	Complaint Record Maintenance.

**Company Operations / Management**

Examiners verified the Certificate of Authority and reviewed Company management, administrative controls, as well as record retention practices.

The Company's cooperation during the course of the examination was noted.

**Marketing and Sales**

Examiners reviewed the first fifty (50) pieces of agent created indexed annuity advertisements listed, out of a total of seventy-four (74) advertisements used in the state of Colorado during the examination period. Additionally, Examiners performed a random sampling of fifty (50) Company created indexed annuity advertisements out of a total of eighty-six (86) advertisements used in Colorado during the examination period.

The content of the material was reviewed to ensure compliance with Colorado insurance laws and to verify that the Company's products were accurately represented.

**Complaints**

Examiners reviewed all fifteen (15) consumer complaints received by the Company during the examination period.

**Producers**

Examiners reviewed producer licenses, producer contracts and commission schedules used during the examination period.

Examiners also reviewed 304 annuity contracts, written by twenty-three (23) selected producers. Individual producers were selected for review based on the ratio/percentage of annuity replacement business written to the total volume of annuity business written in Colorado.

The number of files reviewed per individual producer was based on the following criteria:

- At least ten (10) but not more than nineteen (19) replacements, 100% of their files were reviewed.
- If twenty (20) or more replacements, 25% of their files were reviewed.

**Underwriting – Forms / Policyholder Services**

All of the Company's life and annuity policy forms for which there was inforce business during the examination period were reviewed to verify compliance with Colorado insurance laws.

**New Business Underwriting Practices and Rating**

Examiners reviewed a randomly selected sample population of 100 annuity new business files from a population of 5,840.

Examiners reviewed all thirty-four (34) life insurance replacement files in addition to a randomly selected sample population of fifty (50) annuity replacement files from a population of 1814.

Each of the previously referenced files was reviewed to ensure that required disclosures were provided and fair and consistent underwriting and rating practices were used.

**Underwriting – Cancellations / Declinations / Rescissions**

Examiners reviewed a randomly selected sample population of fifty (50) surrendered and lapsed life insurance files, from a population of eighty-one (81). All thirty-four (34) surrendered annuity files were reviewed.

Examiner's also reviewed all twelve (12) declined and all forty-seven (47) "not taken" life insurance files.

The above files were reviewed to ensure that fair and consistent underwriting practices were used, timely notifications were given, and any required premium refunds were timely and accurate.

**Claims**

Examiners reviewed all five (5) life paid claims.

Examiners randomly selected sample populations of 100 paid annuity claims files, from a population of 39,966.

The Company's claims handling guidelines were reviewed. Additionally, specific claim file information was evaluated to determine timeliness of processing and accuracy of payment.

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**EXAMINATION REPORT SUMMARY**

The examination resulted in a total of ten (10) findings in which the Company did not appear to be in compliance with Colorado insurance laws. The following summarizes Examiner findings.

**Company Operations / Management:** In the area of Company Operations and Management, no compliance issues or concerns were identified and thus are not addressed in this report.

**Marketing and Sales:** In the area of Marketing and Sales, Examiners found five (5) areas of concern. The issues identified are:

- Failing to provide broker/dealers and registered representatives with an annual notification of the requirement to obtain Company approval of all advertisements prior to use and the most serious consequence of not obtaining such approval.
- Using and/or approving for use, advertisements that contained single statements that were untruthful and/or misleading in fact.
- Using and/or approving for use, advertisements that contained commercial rating recommendations without including the required disclosures.
- Using and/or approving for use, advertisements in which disclosures were either minimized, rendered obscure, presented in an ambiguous fashion or intermingled with the text in a manner that made the advertisements confusing and/or misleading.
- Using and/or approving for use advertisements that contain a special offer with an enrollment period that is more than forty (40) days from the first date advertised.

**Underwriting – Forms / Policyholder Services:** In the area of Forms and Policyholder Services, no compliance issues or concerns were identified and thus are not addressed in this report.

**New Business Underwriting Practices and Rating:** In the area of New Business Underwriting Practices and Rating, Examiners found five (5) areas of concern. The issues identified are:

- Failing, in some cases to notify existing insurers of a proposed replacement within five business days of receipt of a completed application.
- Failing, in some cases to produce copies of the notification regarding replacement required by Reg. 4-1-4 Sec. 5(B).
- Failing to develop and maintain an adequate anti-fraud plan to detect and prevent all forms of insurance fraud, as well as failing to develop and maintain adequate written procedures to assure compliance with Colorado Regulation 4-1-11.
- Failing, in some cases to ensure that the product sold was suitable for senior consumers, based on the facts disclosed.
- Failing, in some cases to send notifications or sending untimely notifications to the existing insurer affected by a proposed replacement, when the “agent ordered funds” from the prior carrier.

**Underwriting – Cancellations:** In the area of Cancellation refunds, no compliance issues or concerns were identified and thus are not addressed in this report.

**Claims:** In the area of Claims, no compliance issues or concerns were identified and thus are not addressed in this report.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Colorado Division of Insurance.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

**MARKET CONDUCT EXAMINATION REPORT**

**FACTUAL FINDINGS**

**MARKETING AND SALES**

<p><b>Issue B1: Failing to provide broker/dealers and registered representatives with an annual notification of the requirement to obtain Company approval of all advertisements prior to use and the most serious consequence of not obtaining such approval.</b></p>
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Colorado Regulation 4-1-2 Advertising And Sales Promotion Of Life Insurance, promulgated under the authority of §§10-1-108(8), 10-1-109 and 10-3-1110, Colorado Revised Statutes (C.R.S.) requires in part that:

Section 3. Scope

- B. All advertisements, regardless of by whom written, created or presented the advertisement. Insurers shall establish and, at all times, maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to producers, brokers and others authorized by the insurer to disseminate advertisements of the requirement and procedures for company approval prior to the use of any advertisements that is not furnished by the insurer and that clearly sets forth within the notice the most serious consequence of not obtaining the required prior approval.

The Company does not distribute an annual notification to their contracted Broker/Dealers or the representatives contracted with those Broker/Dealers.

Based on the above information, it appears that the Company is not in compliance with the requirements of Reg. 4-1-2.

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**Recommendation No. 1:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 4-1-2. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance laws.



**Issue B2: Using and/or approving for use, advertisements that contained single statements that were untruthful and/or misleading in fact.**

Colorado Regulation 4-1-2 Advertising And Sales Promotion Of Life Insurance, promulgated under the authority of §§10-1-108(8), 10-1-109 and 10-3-1110, Colorado Revised Statutes (C.R.S.) states in part:

Section 5. Form and Content of Advertisements

- A. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

**Annuity Advertisements**

Population	Sample Size	Number of Exceptions	Percentage to Sample
160	100	6	6%

A review was conducted of 100 randomly selected indexed annuity advertisements, which represents 62% of all indexed annuity advertisements used during the examination period.

The review revealed exceptions involving single statements that were untruthful and/or misleading in six (6) of the advertisements, representing 6% of the sample.

The following is a summary of the advertisements involved.

- Advertisement FLA310 (10% Bonus PowerDex Elite™) lists the annuity option death benefit incorrectly.
- Advertisement FLA312 (MasterDex 10™ Equity Indexed Annuity) lists the lump sum death benefit incorrectly.
- Advertisements FLA526 (MasterDex 10™ Mailer); FLA466 (MasterDex 10™ Mailer); FLA474 (MasterDex Ad Slick); and CR50350 (R10/20023) (BonusDex Elite®) each list the incorrect form number for the policy being advertised.

**Recommendation No. 2:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 4-1-2. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance laws.

**Issue B3: Using and/or approving for use, advertisements that contained commercial rating recommendations without including the required disclosures.**

Colorado Regulation 4-1-2 Advertising And Sales Promotion Of Life Insurance, promulgated under the authority of §§10-1-108(8), 10-1-109 and 10-3-1110, Colorado Revised Statutes (C.R.S.) states in part:

Section 9. Statements About the Insurer

... An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation including, but not limited to, the placement of insurer's rating in the hierarchy of the rating system cited.

**Annuity Advertisements**

Population	Sample Size	Number of Exceptions	Percentage to Sample
160	100	10	10%

A review was conducted of 100 randomly selected indexed annuity advertisements, which represents 62% of all indexed annuity advertisements used during the examination period.

The review revealed exceptions where the appropriate rating organization disclosures were not made in ten (10) advertisements, representing 10% of the sample.

Nine (9) of ten (10) advertisements referenced above include the following statement or one substantially similar.

"Allianz Life® has consistently been assigned financial strength ratings by Standard & Poor's and A.M. Best that are among the highest available."

The remaining advertisement contains the following statement.

"Rated A+ by A.M. Best"

"\*The ratings are based on an analysis of financial results and evaluation of management objectives and strategies. The ratings do not indicate approval by the analyst and are subject to change."

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**Recommendation No. 3:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 4-1-2. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance laws.

**Issue B4: Using and/or approving for use, advertisements in which disclosures were either minimized, rendered obscure, presented in an ambiguous fashion or intermingled with the text, in a manner that made the advertisements confusing and/or misleading.**

Colorado Regulation 4-1-2 Advertising And Sales Promotion Of Life Insurance, promulgated under the authority of §§10-1-108(8), 10-1-109 and 10-3-1110, C.R.S., states in part:

Section 6. Disclosure Requirements

- A. The information required to be disclosed by this regulation shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

**Annuity Advertisements**

Population	Sample Size	Number of Exceptions	Percentage to Sample
160	100	54	54%

A review was conducted of 100 randomly selected indexed annuity advertisements, which represents 62% of all indexed annuity advertisements used during the examination period.

The review revealed exceptions representing 54% of the sample, where the advertising information disclosed was either minimized, rendered obscure, presented in an ambiguous fashion or intermingled with the text of the advertisement. The following summarizes the fifty-four (54) exceptions noted by Examiners.

- In one (1) instance, the bonus forfeiture was presented in an ambiguous fashion, in that the company did not directly state the fact that a forfeiture of the bonus and interest related thereto would occur in certain circumstances. Rather, the Company implied the forfeiture would occur by stating that the “annuitization value” could only be obtained if the contract was held in deferral and annuitized.
- In one (1) instance, Allianz Life Insurance Company of North America was not identified anywhere within the advertisement.
- In two (2) instances, the advertisement included the disclosure of the producer prominently in the advertisement, whereas the disclosure of Allianz Life Insurance Company of North America as the insurer was disclosed in visually smaller print in the end/bottom of the advertisement.
- In five (5) instances, Allianz or Allianz Life® was in large print at the top/beginning of the advertisement and the fact that Allianz Life Insurance Company of North America was the insurer was disclosed in print half the size at the bottom/end of the advertisement.
- In six (6) instances, the insurer’s name was only disclosed at the end/bottom of the advertisement, in print type that is visibly smaller than the performance and illustration disclosures contained in the same piece.

- In eighteen (18) instances, the insurer's name is only disclosed in small print type (8 pt) at the end of the advertisement as a part of a disclosure paragraph.
  - In twenty-one (21) instances, the bonus forfeiture disclosure was obscured and minimized, in that it was contained within the text of a disclosure paragraph in small print, at the end/bottom of the advertisement.
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**Recommendation No. 4:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 4-1-2. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance laws.

**Issue B5: Using and/or approving for use advertisements that contain a special offer with an enrollment period that is more than forty (40) days from the first date advertised.**

Colorado Regulation 4-1-2 Advertising And Sales Promotion Of Life Insurance, promulgated under the authority of §§10-1-108(8), 10-1-109 and 10-3-1110, Colorado Revised Statutes (C.R.S.) states in part:

Section 5. Form and Content of Advertisements

- A. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

T. Introductory, Initial or Special Offers and Enrollment Periods

- (4)...The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than ten (10) days and not more than forty (40) days from the date on which the enrollment period is advertised for the first time. This regulation applies to all advertising media—i.e., mail, newspapers, radio, television, magazines and periodicals—by any one insurer or insurance producer...

**Annuity Advertisements**

Population	Sample Size	Number of Exceptions	Percentage to Sample
160	100	6	6%

A review was conducted of 100 randomly selected indexed annuity advertisements, which represents 62% of all indexed annuity advertisements used during the examination period. The review revealed exceptions where a special offer extended past forty (40) days from the first date advertised in six (6) advertisements, representing 6% of the sample.

The following advertisements extend the special offer past the allowable forty (40) day period.

- FS2-CB50350 (BonusDex Elite Annuity, Extended Special Offer);
- FS2CB50640 (MasterDex 10 Annuity, Extended Special Offer);
- FS2-AG50640-GMV (MasterDex 10 Annuity, Extended Special Offer – Agent Only piece);
- FS2-M5060;
- FS-CB50545 7/2004; and
- FS2-CB50545 (10% Bonus PowerDex Elite Annuity, Extended Special Offer)

**Recommendation No. 5:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 4-1-2. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance laws.

<p><b><u>NEW BUSINESS UNDERWRITING PRACTICES</u></b></p>
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**Issue G1: Failing, in some cases to notify existing insurers of a proposed replacement within five (5) business days of receipt of a completed application.**

Repromulgated Regulation 4-1-4 Replacement of Life Insurance Policies and Annuities, provides in part,

Section 7. Duties of Replacing Insurers that Use Producers

A. Where a replacement is involved in the transaction, the replacing insurer shall:

- (1) Verify that the required forms are received and are in compliance with this regulation;
- (2) Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;

**Annuity Replacement Files**

Population	Sample Size	Number of Exceptions	Percentage to Sample
1814	50	4	8%

A review was conducted of fifty (50) randomly selected annuity replacement contracts, which represents 2.7% of the annuity replacement contracts issued during the examination period.

The review revealed exceptions in four (4) contract files where the Company failed to notify the existing insurer affected by the proposed replacement, representing 8% of the sample.

**Recommendation No. 6:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 4-1-4. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance laws.



**Issue G2: Failing, in some cases, to produce copies of the notification regarding replacement required in Colorado Regulation 4-1-4.**

Repromulgated Regulation 4-1-4 Replacement of Life Insurance Policies and Annuities, states in part:

Section 5. Duties of Producers

- A. A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is “no,” the producer’s duties with respect to replacement are complete.
- B. If the applicant answered “yes” to the question regarding existing coverage referred to in Subsection A, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form which is not less favorable in any respect to the insured. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.

Section 7. Duties of Replacing Insurers that Use Producers

- A. Where a replacement is involved in the transaction, the replacing insurer shall:
  - (1) Verify that the required forms are received and are in compliance with this regulation;
  - (3) Be able to produce copies of the notification regarding replacement required in Section 5B, indexed by producer, for at least five (5) years or until the next regular examination by the insurance department of a company’s state of domicile, whichever is later;

**Annuity Replacement Files**

Population	Sample Size	Number of Exceptions	Percentage to Sample
1814	50	3	6%

A review was conducted of fifty (50) randomly selected annuity replacement contracts, which represents 2.7% of the annuity replacement contracts issued during the examination period.

The review revealed exceptions in three (3) contract files representing 6% of the sample, where the Company was unable to produce the replacement notification required by Reg. 4-1-4.

**Recommendation No. 7:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 4-1-4. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance laws.

<b>Issue G3: Failing to develop and maintain an adequate anti-fraud plan to detect and prevent all forms of insurance fraud, as well as failing to develop and maintain adequate written procedures to ensure compliance with Colorado Regulation 4-1-11.</b>
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Section 10-1-128, C.R.S., Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud - legislative declaration, states in part:

- (5) (a) Every licensed insurance company doing business in Colorado shall prepare, implement, and maintain an insurance anti-fraud plan; except that this subsection (5) shall not apply to entities whose principal business is the assumption of reinsurance, reinsurance agreements, or reinsurance claims transactions. Insurance companies approved by the commissioner under article 5 of this title may be required, as a condition of such approval, to maintain an insurance anti-fraud plan. Each anti-fraud plan shall outline specific procedures, appropriate to the type of insurance provided by the insurance company in Colorado, to:
  - (I) Prevent, detect, and investigate all forms of insurance fraud, including fraud by the insurance company's employees and agents, fraud resulting from false representations or omissions of material fact in the application for insurance, renewal documents, or rating of insurance policies, claims fraud, and security of the insurance company's data processing systems...
- (b) The commissioner of insurance may review a licensed insurance company's anti-fraud plan in connection with a market conduct examination to determine whether such plan complies with the requirements of paragraph (a) of this subsection (5).

Colorado Regulation 4-1-11 Concerning Senior Protection in Annuity Transactions, Duties of Insurers, provides in part,

Section 5. Duties of Insurers and of Insurance Producers

- A. In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.
- D. (1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system, including, but not limited to:

- (a) Maintaining written procedures; and
  - (b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.
- (2) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:
- (a) Maintaining written procedures; and
  - (b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

## **Section 6. Recordkeeping**

- A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

The Company's "Suitability Checklist" (an integral part of the Company's required written procedures) is used to assist the producer in determining product suitability for the senior consumer. This "Checklist" solicits no information regarding surrender charges and/or penalties, or the lack thereof, which are key financial elements in determining the suitability of a potential purchase.

Additionally, producers oftentimes "sell" the bonus option to offset any surrender charges. However, before this bonus option is ever realized, there are several contractual requirements that must be met. This is not addressed in the Company written procedures for determining suitability.

Neglecting to have such information documented creates a circumstance inadequate to detect and prevent fraud relating to unsuitable sales of annuity products.

Lastly, the Company conducted no periodic reviews to assist in detecting and preventing violations of this regulation.

Based on the Company's anti-fraud plan, written policies and procedures for suitability and replacement, it appears that the Company is not in compliance with the requirements of Colorado insurance laws.

**Recommendation No. 8:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-1-128, C.R.S., and Regulation 4-1-11. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with Colorado insurance laws.

**Issue G4: Failing, in some cases to ensure that the product sold was suitable for the senior consumer based on the facts disclosed.**

New Regulation 4-1-11 Concerning Senior Protection in Annuity Transactions, specifically Section 5. Duties of Insurers, which provides in part,

Section 5. Duties of Insurers and of Insurance Producers

A. In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

**Annuity Replacement Files**

Population	Sample Size	Number of Exceptions	Percentage to Sample
1814	50	3	6%

A review was conducted of fifty (50) randomly selected annuity replacement files, which represents 2.7% of all individual annuity replacement contracts issued during the examination period.

The following three (3) exceptions were noted regarding new business transactions involving replacements, with consumers 65 and older, representing 6% of the sample.

- In two instances, the Company failed to obtain a completed suitability checklist for contracts issued after January 1, 2005
- In one instance, the Company issued a contract with contradicting suitability checklist information.

**Annuity New Business Files**

Population	Sample Size	Number of Exceptions	Percentage to Sample
5840	100	3	3%

A review was conducted of 100 randomly selected annuity new business files, which represents 1.7% of all individual annuity new business contracts issued during the examination period.

The following three (3) exceptions were noted in new business transactions involving consumers 65 and older, representing 4% of the sample.

- In three (3) instances, the Company issued a contract in which the information disclosed by the consumer did not provide reasonable grounds for believing that the recommendation is suitable.

Additionally, eight (8) exceptions were noted as part of the review of the new business files of selected individual producers. Those exceptions are as noted below.

- In one (1) instance, the Company failed to obtain the suitability checklist for a contract issued after January 1, 2005.
  - In seven (7) instances, the Company issued a contract in which the information disclosed by the consumer did not provide reasonable grounds for believing that the recommendation was suitable.
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**Recommendation No. 9:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Reg. 4-1-11. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with the aforementioned insurance law.

**Issue G5: Failing, in some cases to send notifications or sending untimely notifications to the existing insurer affected by a proposed replacement, when the “agent ordered funds” from the prior carrier.**

Repromulgated Regulation 4-1-4 Replacement of Life Insurance Policies and Annuities, provides in part,

Section 7. Duties of Replacing Insurers that Use Producers

- B. Where a replacement is involved in the transaction, the replacing insurer shall:
- (1) Verify that the required forms are received and are in compliance with this regulation;
  - (2) Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;

Although inconsistent with the Company’s stated new business replacement policies and procedures, it appears that notification to the existing insurers was not sent or was sent in an untimely manner, when “agent ordered funds” were involved. Notification to the existing carrier is part of the Company’s “Request for Funds” form, which in the case of a replacement, is automatically sent to the existing carrier. In situations where the agent requested funds from the existing carrier, Company procedure was not followed and timely notification to the existing carrier was not accomplished.

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**Recommendation No. 10:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Reg. 4-1-4. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure compliance with the aforementioned insurance law.



## SUMMARY OF ISSUES AND RECOMMENDATIONS

ISSUES	Rec. No.	Page No.
<b>MARKETING AND SALES</b>		
<b>Issue B1:</b> Failing to provide broker/dealers and registered representatives with an annual notification of the requirement to obtain company approval of all advertisements prior to use and the most serious consequence of not obtaining such approval.	<b>1</b>	<b>16</b>
<b>Issue B2:</b> Using and/or approving for use, advertisements that contained single statements that were untruthful and/or misleading in fact.	<b>2</b>	<b>17</b>
<b>Issue B3:</b> Using and/or approving for use, advertisements that contained commercial rating recommendations without including the required disclosures.	<b>3</b>	<b>18</b>
<b>Issue B4:</b> Using and/or approving for use, advertisements in which disclosures were either minimized, rendered obscure, presented in an ambiguous fashion or intermingled with the text in a manner that made the advertisements confusing and/or misleading.	<b>4</b>	<b>20</b>
<b>Issue B5:</b> Using and/or approving for use advertisements that contain a special offer with an enrollment period that is more than forty (40) days from the first date advertised.	<b>5</b>	<b>22</b>
<b>UNDERWRITING – NEW BUSINESS UNDERWRITING PRACTICES</b>		
<b>Issue G1:</b> Failing, in some cases to notify existing insurers of a proposed replacement within five business days of receipt of a completed application.	<b>6</b>	<b>24</b>
<b>Issue G2:</b> Failing, in some cases to produce copies of the notification regarding replacement required in Reg. 4-1-4 Sec. 5(B).	<b>7</b>	<b>26</b>
<b>Issue G3:</b> Failing to develop and maintain an adequate anti-fraud plan to detect and prevent fraud, as well as failing to develop and maintain adequate written procedures to assure compliance with Colorado Regulation 4-1-11.	<b>8</b>	<b>29</b>
<b>Issue G4:</b> Failing, in some cases to ensure that the product sold was suitable for the senior consumer based on the facts disclosed.	<b>9</b>	<b>31</b>
<b>Issue G5:</b> Failing, in some cases to send notifications or sending untimely notifications to the existing insurer affected by a proposed replacement, when the “agent ordered funds” from the prior carrier.	<b>10</b>	<b>32</b>

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